85-1072

No. _____

Supreme Court, U.S.
FILED
DEC 21 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

LORETTA C. ANGEL,

Petitioner,

vs.

SUPERIOR COURT OF SAN DIEGO COUNTY,
LAWRENCE KAPILOFF, JUDGE

Respondent,

Louis H. Renn

Real Party in Interest.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

This Petition is taken pursuant to Section 1257(3) of Title 28 of the United States Code.

LORETTA C. ANGEL

Post Office Box 753
Rancho Santa Fe, California 92067
Telephone: (619) 755-7258

Petitioner pro se

QUESTION PRESENTED

Decision herein prohibits petitioners' right to rely upon signature affixed under penalty of perjury in direct violation of *California Evidence Codes § 622 and § 620*, and thereto constitutes a violation of petitioners' right to due process and equal protection under the *Fourteenth Amendment of the United States Constitution*.

All parties appear in the caption of the case in the United States Supreme Court.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY and CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF CASE	2
1. Proceedings in the Courts Below . .	2
2. Presentation of Question to Courts below	4
REASON FOR GRANTING WRIT	7
1. To Insure the Individual Valid Access to those rights provided for under the law and in accordance with our constitution . . .	7
CONCLUSION	9
APPENDICES	10

A - Denial of Petition for Review by the CALIFORNIA SUPREME COURT (4 Civ. No. D 003719)

B - Denial of Petition for Writ of Certiorari by the CALIFORNIA COURT OF APPEAL (4 Civ. No. D 003719)

C - Order Denying Motion to Recall and Quash Execution and Vacate Levy (Superior Court No. N 23298)

D - Judgment on Verdict (Superior Court No. N 23298)

TABLE OF AUTHORITIES CITED

Page

CONSTITUTION

United States Constitution
Fourteenth Amendment . . . . 2,7&9

CALIFORNIA STATUTES

CALIFORNIA EVIDENCE CODE
Sections 622 & 620 . . . . 2,5&8

CASES

Bryant v Bryant (1958)
161 Cal.App.2d 579, 581, 326 P.2d 898 . 4

Burnett v Kina (1949)
33 Cal.2d 805, 205 P.2d 657, 12 ALR.2d 333 7

Moreno v Mihelis (1962)
207 Cal.App.2d 449, 451, 24 Cal.Rptr. 582 4

People v Salazaar (1975)
50 Cal.App.3d 433, 123 Cal.Rptr. 246 . 7

People v Wilshire Ins. Co. (1975)
46 Cal.App.3d 216, 119 Cal.Rptr. 917 . 7

OPINIONS BELOW

Judgment on Verdict N 23298 was entered in Judgment Book 1557, page 216 on March 12, 1984 and is reproduced as APPENDIX "D" to this petition.

On October 1, 1985, Superior Court denied Petitioners' Motion to Recall and Quash Execution and Vacate Levy for inadequate showing in support of such motion. Such denial is reproduced as APPENDIX "C" to this petition.

Pursuant to such Order, petitioner filed a petition for Writ of Certiorari, 4 Civil No. D 003719, which was denied on October 15, 1985. Such denial is reproduced as APPENDIX "B" to this petition.

Petitioners' petition for Review by the California Supreme Court was denied November 26, 1985, and is reproduced as APPENDIX "A" to this petition.

JURISDICTION

The ruling of the Supreme Court of the State of California was entered November 26, 1985. This Court has Jurisdiction under *United States Code, Title 28, Section 1257(3)*.

STATUTORY and CONSTITUTIONAL PROVISIONS INVOLVED

California Evidence Code § 622, in relevant part provides:

> "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto . . ."

California Evidence Code § 620 in relevant part provides:

> "All presumptions declared by law to be conclusive, are conclusive presumptions."

Fourteenth Amendment of the Constitution of the United States, Section 1 in relevant part provides:

> "No state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. PROCEEDINGS IN THE COURTS BELOW - This is a lawsuit for malicious prosecution and intentional infliction of emotional distress wherein plaintiff (hereinafter Renn) alleged defendants (hereinafter Angels) filed complaint No. N 14705 to set aside judgment N 8598 as rendered due to extrinsic fraud without probable cause and for malicious purpose.

Case No. N 14705 was appealled as 4 Civ. No. 24901 and No. 82-1714 in the United States Supreme Court. Case No. N 8598 was appealled as 4 Civ. No. 31142 and No. 84-246 in the United States Supreme Court. Judgment on verdict was entered February 27, 1984 in the amount of $154,331.13. (APPENDIX "D")

In two separate affidavits for Subpena Duces Tecum dated September 27, 1984, Renns' attorney declared under penalty of perjury under the laws of the State of California that the amount paid on Judgment herein, including cost was $154,331.13. On June 11, 1985, Renns' attorney had issue a writ of execution on such judgment in the amount of $172,092.28. Pursuant to such writ an earnings withholding order (Wage Garnishment) was issued on July 24, 1985 by levying officer A. Dewhurst.

Pursuant to writ, Angel made a Motion to Recall and Quash Execution and Vacate Levy. Evidence submitted in support of such motion were certified copies of the two separate affidavits for Subpena Duces Tecum dated September 27, 1984, wherein Renns' attorney signed under penalty of perjury under the laws of the State of California that the amount paid

on judgment herein, including cost was $154,331.13. On October 1, 1985, respondent denied Angels' motion for the reason stated as being an inadequate showing in support of such motion. (APPENDIX "C")

Legal recourse was pursued by way of a Writ of Certiorari filed in the Court of Appeal, No. D 003719, which was denied October 15, 1985. (APPENDIX "B") A petition for Review was filed in the California Supreme Court, which was denied November 26, 1985. (APPENDIX "A")

2. PRESENTATION OF QUESTION TO COURTS BELOW - Angels' Motion to Recall and Quash Execution and Vacate Levy is proper in accordance with *Bryant v Bryant* (1958) 161 Cal.App.2d 579, 581, 326 P.2d 898, "Writ as quashed where showing made that sum for which execution was issued was not proper amount due and was falsely represented to be due by plaintiff." Further, in accordance with *Moreno v Mihelis* (1962) 207 Cal.App.2d 449, 451, 24 Cal.Rptr. 582, "All rights and proceedings based on Writ of Execution as falling with it when it is quashed."

Angels' documentary evidence, being two separate

affidavits for Subpena Duces Tecum dated September 27, 1984, and signed by Renns' attorney, stating that the amount paid on judgment herein, including costs was $154,331.13, is not only adequate showing that Angels did not owe Renn such amount, but is conclusive proof of such fact in accordance with applicable evidence codes.

California Evidence Code § 622 states in relevant part, "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, . . ." Further, *California Evidence Code § 620* states in relevant part, "All presumptions declared by law to be conclusive, are conclusive presumptions." Therefore, under existing law, when the presumption is conclusive, the court is required to find the existence of the presumed fact regardless of the strength of the opposing evidence. Where the burden of proof is met under statute by way of conclusive evidence, additional evidence is entirely unnecessary and would indeed be redundant.

Renns' attorney opposed Angels' Motion to Recall and Quash Execution and Vacate Levy by alleging, without more, a typographical error as to both

affidavits. Under current applicable law, this can in no way defeat conclusive evidence establishing Angels did not owe Renn $172,092.28 on June 11, 1985, nor did Angels owe Renn $172,092.28 on any date. Indeed, how do the alleged typographical errors negate or explain an attorneys signature affixed under penalty of perjury to legal documents. It must be presumed that any person, indeed an attorney, must read that which is signed under penalty of perjury. In the minimum, an attorney must be charged with the knowledge of the importance of signature, especially a signature to a legal document, and more especially when signature to that document is affixed under penalty of perjury.

Renns' attorney asserts in opposing memorandum of points and authorities that Renn could be substantially disadvantaged, while ignoring the disadvantage to be suffered by Angels in paying Renn or Renns' attorney a huge amount of money to which neither are entitled. Absent entirely from the opposing pleadings is any declaration by Renn himself, the supposed party to be disadvantaged. Would any person standing to be so disadvantaged not declare in his own

behalf?

In accordance with *Burnett v Kina* (1949) 33 Cal.2d 805, 205 P.2d 657, 12 ALR.2d 333, *People v Salazaar* (1975) 50 Cal.App.3d 433, 123 Cal.Rptr. 246 and *People v Wilshire Ins. Co.* (1975) 46 Cal.App.3d 216, 119 Cal.Rptr. 917, "Where statute requires court to exercise its jurisdiction in a particular manner, follow a particular procedure, or act subject to certain limitations, an act beyond these limits is in excess of jurisdiction." A court is acting in excess of its jurisdiction where it acts in excess of its power as defined by constitutional provision [or statute, or rules developed by the courts and followed under the Doctrine of Stare Decisis]. The courts' action herein constitutes a violation of Angels' right to due process and equal protection under the law provided for under the *Fourteenth Amendment of the United States Constitution.*

REASON FOR GRANTING WRIT

1. To Insure the Individual Valid Access to those rights provided for under the law and in accordance with our constitution

Respondent herein has set precedent in direct violation of *California Evidence Codes § 622 and § 620*, a precedent dangerous as to all litigation wherein the attorney is privileged above and beyond that law to which all others are held strictly accountable. Pursuant to the knowledge, expertise and experience of an attorney, he must be held to an equal, if not higher, standard of care in signature than the layperson. To proceed otherwise would undermine confidence in and reliance upon signature anywhere by anyone.

A statute preceived as ambigious gives some degree of notice which would reasonably negate absolute reliance. On the other hand, and of significant importance, a statute obsolute in its directive, compels reliance.

Pursuant to statute, the legislature must have intended reliance upon signature, and not just by litigants, but by attorneys and judges as well. Pursuant to constitutional rights, the intent must be reliance, by all individuals, upon statute, upon that which is law until such law is, by law, changed.

CONCLUSION

This petition should be granted because the Supreme Court of the State of California has ruled in such a way as to deprive Angels due process of law and equal protection under the law provided for in the *Fourteenth Amendment of the United States Constitution*. Of significant importance is the fact that the States' Court Decision defeats public trust and is against public interest.

Petitioner, Loretta C. Angel, prays that a Writ of Certiorari issue to review the decree of the Supreme Court of the State of California.

Dated: December 9, 1985

Respectfully submitted,

_____

Loretta C. Angel
Petitioner pro se

APPENDIX SECTION

A - Denial of Petition for Review by the CALIFORNIA SUPREME COURT (4 Civ. No. D 003719)

B - Denial of Petition for Writ of Certiorari by the CALIFORNIA COURT OF APPEAL (4 Civ. No. D 003719)

C - Order Denying Motion to Recall and Quash Execution and Vacate Levy (Superior Court No. N 23298)

D - Judgment on Verdict (Superior Court No. N 23298)

CLERK'S OFFICE, SUPREME COURT
4250 State Building

San Francisco, California 94102

Nov 26 1985

I have this day filed Order

REVIEW DENIED

In re: 4 Civil *No.* D003719

LORETTA C. ANGEL

vs.

Superior Court, San Diego County

Respectfully,

Clerk

COURT OF APPEAL -- STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

LORETTA C. ANGEL, Petitioner, v. SUPERIOR COURT, etc., county of san diego, Respondent;	No. D003719 SUPERIOR COURT NO. N 23298 F I L E D *Keenan G. Casady, Clerk* O C T 1 5 1 9 8 5 *Court of Appeal* *Fourth District*
LOUIS H. RENN, Real Party in Interest.	

THE COURT:

The Petition for writ of certiorari has been read and considered by Presiding Justice Kremer and Justices Work and Lewis. The petition is denied.

Signed by: Lewis

Acting *Presiding Justice*

Copies to: All Parties

F I L E D
Robert D. Zumwalt, Clerk

O C T 1 1985
By D. McCaughan

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, NORTH COUNTY JUDICIAL DISTRICT

LOUIS H. RENN, Plaintiff, vs. THOMAS R. ANGEL, LORETTA C. ANGEL and DOES I through X, Inclusive. Defendants.	CASE NO. N23298 ORDER DENYING MOTION TO RECALL and QUASH EXECUTION and VACATE LEVY

The motion of defendant Loretta Angel for an order to recall and Quash Execution and Vacate Levy in the above-entitled cause came on for determination by the court on September 25, 1985. Determination was rendered pursuant to the moving papers, and ruling was obtained via telephone recording.

IT IS ORDERED that the motion be and hereby is denied for inadequate showing in support of motion, and further, the court will entertain a motion by plaintiff pursuant to CCP §128.5.

Dated: O C T 1, 1 9 8 5

Signed by: LAWRENCE KAPILOFF
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

LOUIS H. RENN, Plaintiff vs. THOMAS R. ANGEL AND LORETTA C. ANGEL, Defendants	F I L E D Robert D. Zumwalt, Clerk MAR 9 1984 Judgment on Verdict In Open Court C.C.P. Sec. 664 No. N 23298

This action came on regularly for trial on the 27TH day of FEBRUARY, 1984. The said parties appeared by their attorneys, PHILIP BURKHARDT, counsel for Plaintiff and THE DEFENDANTS APPEAR IN PROPRIA PERSONA. A jury of TWELVE persons was regularly empaneled and sworn to try said action. Witnesses on the part of Plaintiff and Defendants were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the court, the jury retired to consider its verdict; subsequently, all of the jurors returned into court with the verdict signed by the foreman, and duly rendered their verdict in writing in favor of the PLAINTIFF, as follows:

"WE, THE JURY, IN THE ABOVE ENTITLED ACTION FIND IN FAVOR OF THE PLAINTIFF, LOUIS H. RENN AND AGAINST THE DEFENDANTS, THOMAS R. ANGEL AND LORETTA C. ANGEL AND FIX DAMAGES AS FOLLOWS:

SPECIAL DAMAGES	$ 4,331.13
GENERAL DAMAGES	$ 50,000.00
PUNITIVE DAMAGES	$ 100,000.00

DATED: MARCH 9, 1984
14:15 P.M.

JURY FOREMAN

BY /S/ JAMES T. SLOCUM

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said PLAINTIFF, LOUIS H. RENN, have and recover from said DEFENDANTS, THOMAS R. ANGEL AND LORETTA C. ANGEL, JUDGMENT IN THE AMOUNT OF $154,331.13 AND costs and disbursements incurred in this action, amounting to the sum of $ _____.

I, the undersigned, Clerk of the Superior Court of San Diego County, do hereby certify the foregoing to be a full, true and correct Judgment entered in the above entitled action.

ATTEST my hand and the seal of said Superior Court, this 9TH day of MARCH, 1984.

ROBERT D. ZUMWALT, Clerk

By /S/ Lillian M. Tusa,

LILLIAN M. TUSA, Deputy Clerk

E N T E R E D

MAR 12 1984

Judgment Book 1557 Pg 216

IN THE SUPREME COURT OF THE
UNITED STATES

CASE NUMBER _____

DECLARATION OF SERVICE BY MAIL
(C[illegible] 1013a and 2015.5)

APPEALS CT 4 Civil D003719

SUPERIOR CT N 23298

I, Tom Angel Jr. declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am residing in the County of San Diego, California, in which county the within-mentioned mailing occurred. My residence address is Post Office Box 753 Rancho Santa Fe, California. I served the within

PETITION TO THE UNITED STATES SUPREME COURT: An original and 39 copies on the United States Supreme Court as follows: Clerk, U.S. Supreme Court, Washington, D.C. 20543

of which true and correct copies of the document filed in the cause is affixed by placing three copies thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

California Supreme Court
4250 State Building
San Francisco, CA 94102

Court of Appeal
1350 Front Street
Room 6010
San Diego, CA 92101

Judge Lawrence Kapiloff
Superior Court
325 Melrose Drive
Vista, CA

Philip Burkhardt
Post Office Box 1369
Rancho Santa Fe, CA
92067

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at Rancho Santa Fe, CA, on December 9, 1985. I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 9, 1985, at Rancho Santa Fe, California.

_____